

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 500 - HB 519

February 25, 2013

SUMMARY OF BILL: Replaces the language “TennCare to pay for either the clinical visit or for payment of the controlled substances” with “TennCare to obtain the benefits” as it relates to the offense of obtaining, attempting to obtain, or aiding and abetting any person to obtain controlled substance benefits by knowingly, willfully, and with the intent to deceive, failing to disclose that the person obtained the same or similar controlled substance or a prescription for the same or similar controlled substance from another provider within the previous 30 days.

Creates a Class E felony offense of using TennCare to obtain a drug and knowingly selling, delivering, or aiding or abetting any person in the sale or delivery of the drug. A duly licensed physician, nurse practitioner, pharmacist, or other provider authorized to issue or dispense a prescription who is acting in good faith in the course of the individual’s profession is not subject to the prohibition.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures – Not Significant

Other Fiscal Impact – According to the Department of Finance and Administration, Office of Inspector General, increased state revenues could result due to increased restitution collections pursuant to Tenn. Code Ann. § 71-5-2601(b). Due to a number of unknown factors, an exact estimate of the amount of restitution cannot be quantified.

Assumptions:

- Current law relative to obtaining controlled substance benefits applies to persons using TennCare to “pay for either the clinical visit or for payment of the controlled substances.” According to the Department of Finance and Administration, Office of Inspector General (OIG), the current language describes reimbursement practices prior to the use of capitated payments. Changing this language to “obtain the benefits” is consistent with current law and practice and will not affect the number of investigations, prosecutions, or convictions associated with this offense. The fiscal impact of this provision will be not significant.
- Current law prohibits a person, including an enrollee, recipient, or applicant, from knowingly obtaining, or attempting to obtain, or aiding or abetting any person to obtain, by means of a willfully false statement, representation, or impersonation, or any other


fraudulent means or in any manner not authorized by laws governing TennCare, any medical assistance benefits or any assistance to which the person is not entitled.

- Current law also prohibits a person or entity, other than an enrollee, recipient, or applicant, from knowingly obtaining, or attempting to obtain, or aiding or abetting any person to obtain, by means of a willfully false statement, report, representation, or any other fraudulent means or in any manner not authorized by laws governing TennCare, medical assistance payments to which the person or entity is not entitled.
- The bill establishes a new offense of selling, delivering, or aiding or abetting the sale or delivery of a drug obtained using TennCare that does not have as an element of the offense that the person fraudulently obtained the drug.
- According to the Department of Finance and Administration, Office of Inspector General (OIG), a total of 303 drug sale cases were received by OIG over a period of three years (123 in 2010, 75 in 2011, and 105 in 2012). OIG staff received case information from a variety of sources including law enforcement, the Bureau of TennCare, the Division of Health Related Boards, the Department of Human Services, health care providers, managed care contractors, and the general public via the OIG website, written correspondence, and telephone calls to the OIG Fraud Hotline.
- The bill will potentially ease prosecution of persons who sell or deliver drugs, or aid or abet the sale or delivery of drugs, obtained using TennCare. The state will no longer be required to establish that a person did not need or intend to use the drug for the person's treatment at the time the drug was obtained or otherwise fraudulently obtained the drug.
- According to the Department of Correction (DOC), the fiscal impact of the bill on the Department will be not significant.
- According to DOC, the five year admissions average for convictions under Tenn. Code Ann. § 71-5-2601(a)(2) (fraud by person other than enrollee) was 0.6. No persons were admitted for conviction under Tenn. Code Ann. § 71-5-2602(a)(1) (fraud by enrollee) in the past five years.
- It is assumed that the bill will result in one additional admission over the next 10 years. The bill will not result in an increase of admissions above those estimated in the fiscal note for Public Chapter 784 of 2004. It is estimated that any admissions resulting from this proposed legislation are currently being appropriated for in DOC's budget. Therefore, any admissions as a result of the proposed legislation will not have a significant fiscal impact and can be accommodated within the existing resources of the Department without an increased appropriation.
- According to OIG, any increase in investigations and prosecutions can be accommodated within the existing resources of the OIG. The fiscal impact on OIG will be not significant.
- According to OIG, payments of restitution pursuant to Tenn. Code Ann. § 71-5-2601(b) would increase if the number of convictions increases. Due to a number of unknown factors which includes, but is not limited to, the type and cost of the drugs obtained, the amounts paid by TennCare and the federal government for the benefits, and the number of convictions, the amount by which payments of restitution will increase cannot be reasonably estimated.
- According to the Administrative Office of the Courts, any increase in caseloads that results from the bill can be accommodated within the courts' existing resources. The fiscal impact on the courts will be not significant.

- Any impact on the caseloads of the District Attorneys General Conference or the District Public Defenders Conference can be accommodated within existing resources without an increased appropriation or reduced reversion.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" written in a larger, more prominent script than the last name "Geise".

Lucian D. Geise, Executive Director

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